Supreme Court, U.S.
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No. 01-0834

In The

# Supreme Court of the United States

CITY OF LYNN,

*Petitioner,*

v.

TERRANCE THOMPSON,

*Respondent.*

**On Petition For Writ Of Certiorari To The Massachusetts Supreme Judicial Court**

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED FOR REVIEW

Whether the Massachusetts Supreme Judicial Court correctly affirmed an arbitrator's award that reinstated Terrance Thompson as a City of Lynn Police Officer, holding that the award does not violate public policy, state or federal.

## PARTIES TO THE PROCEEDING

Petitioner is the City of Lynn (hereinafter "City"). Respondent is Terrance Thompson (hereinafter "Thompson"). None of the parties hereto are corporations.

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## OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Thompson respectfully submits that the decision of the Massachusetts Supreme Judicial Court correctly applied the governing law in the Commonwealth of Massachusetts and that the instant Petition for Writ of Certiorari presents no valid grounds for review and thus should be denied.

## STATEMENT OF THE CASE

The controlling facts are set forth in detail in the Arbitration Award. (Appendix "Pet. App." 40-80).

## ARGUMENT

### I. THE MASSACHUSETTS SUPREME JUDICIAL COURT CORRECTLY HELD THAT THE ARBITRATOR'S AWARD REINSTATING TERRANCE THOMPSON DOES NOT VIOLATE PUBLIC POLICY.

#### A. The Facts Found by the Arbitrator Are Final.

Despite the persistent yet erroneous yearnings of the City in its Petition and throughout its post arbitration filings that Thompson was responsible for breaking Elizabeth Raymer's (hereinafter "Ms. Raymer") arm, it cannot ignore the arbitrator's contrary ruling. After many arbitration hearing days, the arbitrator found that Thompson did not use excessive force in his contact with Ms. Raymer and that he was thus not responsible for breaking her arm. Pet. App. 78. It matters not how many

times the City's Petition states and restates that Thompson broke Ms. Raymer's arm while restraining her because the singular salient fact to this proceeding is that the mutually selected arbitrator cleared Thompson of using excessive force. Pet. App. 78. Facts found by arbitrators are final and any errors that may have been made by the arbitrator are not subject to review. *Eastern Associated Coal Corporation v. United Mine Workers of America, District 17*, 531 U.S. 57, 62 (2000). Though the Massachusetts Supreme Judicial Court opined that some of the Thompson arbitrator's findings were unsound, it held that the court must accept the findings, even if believed that they are "grossly erroneous." *City of Lynn v. Thompson*, 435 Mass. 54, 61-62 (2001). Federal law is no different.

### B. No Public Policy Has Been Violated That Would Preclude the Arbitration Award's Reinstatement of Thompson.

The City contends that 42 U.S.C. § 1983 is a public policy that would preclude the enforcement of the arbitration award reinstating Thompson to the position of police officer for the City of Lynn. This statute, 42 U.S.C. § 1983, is remedial in nature as it provides a mechanism of redress for collecting damages in civil actions and provides no substantive rights. *City of Canton v. Harris*, 489 U.S. 378, 395 (1989); *Monroe v. Pape*, 365 U.S. 167, 170-175 (1969). Despite this, the City asserts that it may not be able to defend itself against liability in future civil rights cases naming Thompson as a defendant because of an adverse jury verdict in the early 1990s against Thompson for excessive force, and because it decided to

settle the lawsuit brought by Ms. Raymer.[1] The City also argues that it would be absolutely liable in future civil rights actions. Therefore, it postulates, public policy requires that Thompson cannot be reinstated as a police officer.

The City misunderstands the municipal liability standard required in civil rights cases. The principle of *respondeat superior* does not apply to local governmental entities for purposes of § 1983 liability. *City of Canton, supra* at 385; *Monell v. Department of Social Services*, 436 U.S. 658, 694-695 (1978). Municipal liability would lie only for a municipality's unconstitutional policies, practices, and customs that cause the plaintiff's constitutional deprivation. *Id.* Despite the City's arguments about speculative potential future civil liability, it offers this Court no authority from any court of this land, any statute, or any regulation to support its contention that this "public policy" must void the arbitration award that reinstated Thompson.[2] If the City's arguments prevail, then

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[1] Given that police officers are charged with enforcing laws, sometimes they must use force to affect such and some harm may result to individuals when a police officer justifiably uses force. *See Graham v. Connor*, 490 U.S. 386, 390 (1988) (use of force by police that results in citizen sustaining broken foot, cuts and injured shoulder may not be constitutionally excessive); *Dean v. City of Worcester*, 924 F.2d 364, 369 (1st Cir. 1991) (police use of force resulting in cut nose, scratches and welts was reasonable); *Commonwealth v. Garner*, 423 Mass. 735, 744-745 (1996) (use of stun grenade during execution of search warrant was reasonable even though little girl allegedly injured.).

[2] The absence of the City's authority to support its proposition speaks to the rarity of the application of the public policy exception. The type of cases which have implicated the

disciplinary decisions regarding public employees would be made by juries who reach verdicts and politicians who authorize settlements of suits. This cannot be the basis of a public policy.

### C. *Eastern Associated Coal Corporation* Supports the Premise That Thompson's Arbitration Award Does Not Violate Public Policy.

The City suggests that *Eastern Associated Coal Corporation v. United Mine Workers of America, District 17*, 531 U.S. 57 (2000) is distinguishable from the case at bar and thus should not to be considered by this Court. This suggestion reflects an entire misreading of the case as *Eastern Associated Coal* strongly supports Thompson's position that his reinstatement award does not violate public policy.

*Eastern Associated Coal* held that an arbitrator's reinstatement of an employee (a truck driver) who failed two

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public policy exception stem from potential incidents of mass destruction to the general public. *See Exxon Shipping Co. v. Exxon Seamen's Union*, 993 F.2d 357 (3rd Cir. 1993) (positive drug testing helmsman runs oil tanker aground); *Gulf Coast Indus. Workers Union v. Exxon Oil Co.*, 991 F.2d 244, 252 (5th Cir.), *cert. denied*, 114 S.Ct. 441 (1993) (positive drug testing petro-chemical technician); *Delta Air Lines, Inc. v. Air Pilots Ass'n Int'l*, 861 F.2d 665 (11th Cir. 1988), *cert. denied*, 493 U.S. 871 (1989) (intoxicated air line pilot); *Iowa Elec. Light & Power v. Local Union 204 of the Int'l Bhd. Of Elec. Workers*, 834 F.2d 1424 (8th Cir. 1987) (safety violating nuclear plant worked); *Amalgamated Meat Cutter & Butcher Union v. Great W. Food Co.*, 712 F.2d 122 (5th Cir. 1983) (drunk tractor trailer driver). In all of these cases, however, the arbitrator found the employee committed the conduct charged, unlike the arbitrator here.

drug tests did not violate public policy. The Court reasoned that due to a regulatory scheme in place concerning truck drivers, termination was not required and that rehabilitation was encouraged. The employee's suspension was within the arbitrator's authority and consistent with the parameters of the regulatory scheme. *Eastern Associated Coal* recognized that people can differ as to whether reinstatement or discharge is the more appropriate remedy, but both parties agreed to entrust the remedial decision to an arbitrator.

The case is similar to this in that both arbitrators reinstated employees, but imposed a period of suspension. In Thompson, the arbitrator suspended him for two weeks for his insensitive treatment of a mentally ill woman. Pet. App. 79-80. The Thompson facts are more compelling than those in *Eastern Associated Coal* in showing that public policy should not void the award implementation. The key difference between the *Eastern Associated Coal* truck driver and Thompson is that Thompson did not commit the gravamen of the charges brought against him. The arbitrator found that Thompson did not use excessive force in restraining Ms. Raymer whereas the other arbitrator found that the truck driver twice committed a criminal act by failing drug tests. Though the City dislikes the arbitration result, it received what it agreed to and bargained for with the police union: a hearing process with an independent arbitrator entrusted with this remedial decision. *Eastern Associated Coal, supra* at 67.

Assuming *arguendo* that § 1983 is an applicable source of public policy, then similarly to the regulatory scheme applicable to the truck driver in *Eastern Associated*

*Coal* this federal statute does not require that its violators be terminated. In fact, § 1983 is silent as to the employment implications of its violators. This is so because by its terms § 1983 provides no rights but only an avenue of civil redress. *City of Canton, supra* at 395; *Monroe, supra* at 170-175. Had Congress in 1871, or at any time subsequent thereto, desired to mandate termination of violators of § 1983, then the legislature would have voted to amend the Act in the past 130 years. Employment disputes in the public sector are commonly resolved by arbitration which provides for an informal, yet inexpensive means of final resolution of disputes stemming from collective bargaining agreements. That is exactly the case at hand. The arbitrator heard evidence presented by counsel for both parties and entered an award that was within the scope of the agreed to arbitration issues. Pet. App. 40-41. Like *Eastern Associated Coal*, no public policy is implicated or violated to prevent the arbitrator's reinstatement of Thompson.

## CONCLUSION

The Petition for Writ of Certiorari fails to demonstrate any valid grounds for review of the decision below and should be denied.

Respectfully submitted,

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